Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Applications of WorldCom, Inc. and	)	
MCI Communications Corporation for	)	CC Docket No. 97-211
Transfer of Control of MCI Communications	)	
Corporation to WorldCom, Inc.	)	

To: The Commission

JOINT OBJECTION
OF WORLDCOM, INC. AND MCI COMMUNICATIONS CORPORATION
TO DISCLOSURE OF STAMPED CONFIDENTIAL DOCUMENTS

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Dated: June 12, 1998

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WorldCom, Inc. ("WorldCom") and MCI Communications Corporation ("MCI") (collectively "Applicants"), by their undersigned counsel, pursuant to the Order Adopting Protective Order released by the Commission in this proceeding on June 5, 1998 (the "Protective Order"), hereby object to the disclosure of Stamped Confidential Documents to certain persons who have executed an Acknowledgment of Confidentiality on behalf of Bell Atlantic Corp. ("Bell Atlantic"). Specifically, Applicants object to disclosure of Stamped Confidential Documents to Edward D. Young III and John Thorne on the grounds that these senior level in-house counsel are involved in "competitive decision-making" for Bell Atlantic and are therefore not eligible to review the highly proprietary and competitively sensitive documents produced pursuant to the Protective Order. Applicants received the Acknowledgments of Confidentiality of Mr. Young and Mr. Thorne on June 9, 1998. This objection is therefore timely pursuant to Paragraph 5 of the Protective Order.

I. THE PROTECTIVE ORDER PRECLUDES ACCESS TO STAMPED CONFIDENTIAL DOCUMENTS BY IN-HOUSE COUNSEL INVOLVED IN COMPETITIVE DECISION-MAKING

In the Protective Order, the Commission strictly limited disclosure of Stamped Confidential Documents to "outside counsel of record and in-house counsel who are actively engaged in the conduct of this proceeding, *provided that those in-house counsel seeking access are not involved in competitive decision-making, i.e., counsel's activities, association, and relationship with a client that are such as to involve counsel's advice and participation in any or all of the client's business decisions made in light of similar or corresponding information about a competitor.*" Protective Order ¶ 3 (emphasis added). This standard was derived from the standard adopted by federal courts. *Id.*, citing *U.S. Steel Corp. v. United States*, 730 F.2d 1465, 1468 n.3 (Fed. Cir. 1984); *Brown Bag Software v. Symantec Corp.*, 960 F.2d 1465, 1470 (9th Cir. 1992), *cert. denied*, 506 U.S. 869 (1992). The test for whether in-house counsel access is proper depends upon whether such access will present "*an unacceptable opportunity for inadvertent disclosure*" of confidential discovery materials. *U.S. Steel*, 730 F.2d at 49 (emphasis added), *see also* Louis S. Sorrell, "In-House Counsel Access to Confidential Information Produced During Discovery in Intellectual Property Litigation," 27 J. Marshall L. Rev. 657, 679. The risk of inadvertent disclosure depends upon the extent to which in-house counsel participate in competitive decision-making of their employer. *Id.* As demonstrated below, Mr. Young and Mr. Thorne, both Senior Vice Presidents of Bell Atlantic, are each closely intertwined with and involved in the competitive decision-making of Bell Atlantic. Because the inadvertent disclosure of confidential information is a near certainty, and therefore clearly presents an "unacceptable opportunity" for such disclosure, they should not be permitted to have access to Stamped Confidential Documents.

II. THE CORPORATE PHILOSOPHY OF BELL ATLANTIC MAKES ITS ATTORNEYS COMPETITIVE DECISION-MAKERS

Mr. Young and Mr. Thorne are both Senior Vice Presidents of Bell Atlantic, which places them in a management position which inevitably creates an "unacceptable opportunity for inadvertent disclosure" as they discuss inextricably intertwined business and legal strategies with their in-house clients. Indeed, this senior position in the company merits Mr. Young's identification on the Bell Atlantic web site as a member of the "Visionary Leadership and Strong Management" of the company. The web site states that Mr. Young "is actively involved in significant operating and strategic decisions of Bell Atlantic and plays an important role in the technical development and management of the company."[1] Mr. Young reportedly "oversees 68 nonlawyers, whose functions include the complex processes of setting prices for Bell Atlantic's various services."[2] It is axiomatic that pricing decisions are among the precise types of competitive decision-making that precludes an in-house counsel's review of Stamped Confidential Documents pursuant to the Protective Order.[3] Likewise, Mr. Thorne has been characterized as a "top lieutenant" of Bell Atlantic General Counsel

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[1] Profile, Edward D. Young III, Bell Atlantic, downloaded June 9, 1998 from <http://www.ba.com/speeches/profiles/eyoung.html>. A copy of Mr. Young's Profile is attached as Exhibit 1.

[2] Nicholas Varchaver, "These Lawyers Mean Business: Bell Atlantic General Counsel James Young and His Top Lieutenants Are Storming the Barricades in the Information Revolution," Corporate Counsel Magazine, June 1995, at 37 ("*Corporate Counsel Article*"). A copy of the article is attached as Exhibit 2.

[3] *U.S. Steel*, 730 F.2d at 49 n.3 ("Competitive decisionmaking" is "serviceable as a shorthand for a counsel's activities, association, and relationship with a client that are such as to involve counsel's advice and participation in any or all of the client's decisions *(pricing, product design, etc.)* made in light of similar or corresponding information about a competitor." Emphasis added.)

James Young.[4] It is beyond doubt that disclosure of Applicants' highly proprietary competitive information to in-house attorneys at Bell Atlantic who reach the level of seniority attained by Mr. Young and Mr. Thorne would pose an "unacceptable opportunity for inadvertent disclosure" by these gentlemen in the course of carrying out their business activities and responsibilities.

The Bell Atlantic legal operations are clearly fused with its business operations. For example, "Bell Atlantic's business side seems to hold the law department in high regard, giving it control of matters, such as lobbying, that go beyond the law per se."[5] Chief among the lawyers at Bell Atlantic that fall into this category are Mr. Young and Mr. Thorne: "[b]oth work closely with Bell Atlantic's business side. 'This is really an integrated strategy,' says James Cullen, Bell Atlantic's vice-chairman. He praises the lawyers' understanding of the company's business and describes the law department as 'a world-class law firm that happens to be built within Bell Atlantic."[6] The conclusion is unmistakable: "Bell Atlantic's business lawyers also work in step with the business people and play a key role,"[7] and this is particularly true with respect Senior Vice Presidents Thorne and Young.

Mr. Young and Mr. Thorne are among the most senior members of a corporate legal department that has developed a reputation for using litigation and other legal mechanisms as part of the company's competitive strategy. The close linkage between Bell Atlantic's legal strategy and its competitive business strategy makes legal decisions virtually indistinguishable from competitive

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4 *Corporate Counsel Article* at 31.

5 *Id.* at 37.

6 *Id.*

7 *Id.*

business decisions and therefore presents an "unacceptable opportunity" for inadvertent disclosure of the highly confidential and competitively sensitive Stamped Confidential Documents produced subject to the Protective Order. As Bell Atlantic's Vice Chairman has acknowledged, Bell Atlantic's team of lawyers "aggressively look for ways to serve the company's business objectives."[8] According to Mr. Thorne, "[w]e're given some budget for weapons, and we have some license to go out and hunt."[9] This attitude has lead to the conclusion that "[a]t Bell Atlantic, the litigation plan *is* the business plan."[10]

Clearly, the corporate philosophy at Bell Atlantic that encourages activism on the part of its legal staff to obtain business objectives pervades *all* of its in-house lawyers and provides them all with the opportunity to be part of the competitive decision-making process and therefore to pose a risk of inadvertent disclosure of the Stamped Confidential Documents produced by Applicants. Nevertheless, Applicants have limited this Objection to two of Bell Atlantic's most senior in-house counsel who are Senior Vice Presidents of the company, who "work closely with Bell Atlantic's

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[8] *Id.* at 32 (quoting Bell Atlantic Vice Chairman James Cullen).

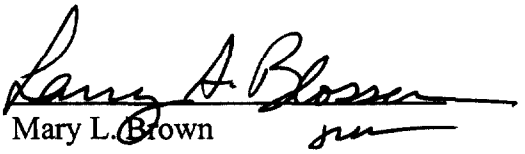
[9] *Id.*

[10] *Id.* Bell Atlantic's endorsement of this view is supported by the fact that the lawyers described in the article willingly cooperated with the reporter, as evidenced by the numerous quotations attributed to them and a group photo of three prominent Bell Atlantic lawyers (including Mr. Young and Mr. Thorne).

business side,"[11] and who Bell Atlantic's Vice Chairman has characterized as part of "an integrated strategy."[12] Applicants ask that Mr. Young and Mr. Thorne be denied access to Stamped Confidential Documents pursuant to the Protective Order.

Respectfully submitted,

MCI COMMUNICATIONS CORPORATION



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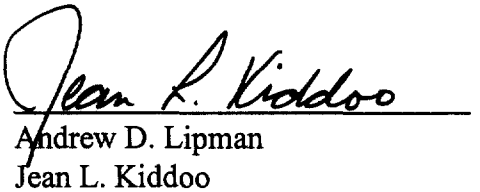

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Dated: June 12, 1998

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11 *Id.* at 37.

12 *Id.*

EXHIBIT 1

Edward D. Young III

Edward D. Young III
Senior Vice President & Associate General Counsel Regulatory

Edward D. Young, III is the Vice President - External Affairs and Associate General Counsel for Bell Atlantic. He is the responsible Bell Atlantic officer for federal regulatory matters and public policy issues. He is actively involved in significant operating and strategic decisions at Bell Atlantic and plays an important role in the technical development and management of the company. In 1996, he will lead the effort to ensure that the new Telecommunications Act will allow Bell Atlantic to offer a full range of telecommunications services to its customers free from unnecessary costs and regulations.

Prior to his current position, Mr. Young was Vice President, General Counsel, & Secretary of Bell Atlantic- N.J. Since joining Bell Atlantic at its divestiture from AT&T in 1984, he has been a leader in reforming telecommunications regulation to permit customer choice, and not regulation, to decide how new technologies are introduced. For example, in 1992, he was instrumental in getting the New Jersey legislature to overhaul its telecommunications laws--the first successful regulatory reform effort since 1919.

Mr. Young speaks and writes frequently about telecommunications issues and has testified before Congress and state legislatures. Copies of his most recent speeches can be found on the Internet at http://www.ba.com/speeches/eyspeeches.html . He has taught Administrative Law at Seton Hall University School of Law. Also, he is frequently consulted by other countries seeking to change their telecommun ications laws and is listed in the International Who's Who of Professionals.

Mr. Young has a law degree from Harvard Law School and graduated with honors from Amherst College.

Mr. Young has diverse interests and talents. He learned to program computers at age 16 and built his first computer by hand at age 21. He was named a Mark DeWolfe Howe Scholar by Harvard Law School, a John Woodruff Simpson Scholar in Law by Amherst College, and a Walter Reed Army Medical Center Fellow in Radiation Physics. Also, he has won the Lincoln Lowell Russell Prize in Music, an U.S. Army Engineering Fair Award for advances in particle physics, and the Amherst College Computer Center Prize.

Mr. Young serves on the Board of Directors for the U.S. Telephone Association and the U.S. Technical Training Institute.

Born in 1956 in Roswell, New Mexico, Mr. Young is married to the Rev. Gina Tillman-Young, who is also an attorney. They have seven children, four of whom were delivered at home by Mr. Young. The

Young's reside on a farm by the Chesapeake Bay in Deale, Maryland.

Mr. Young's e-mail address is edward.d.young@bell-atl.com.

EXHIBIT 2

These Lawyers Mean Business

Bell Atlantic General Counsel James Young And His Top Lieutenants Are Storming The Barricades In The Information Revolution

In late March John Thorne taped a printout of a stock analyst's "buy" recommendation to his office door. Here, as the Bell Atlantic Corporation vice-president and associate general counsel saw it, was the payoff for his department's latest coup: On March 19 U.S. district judge Harold Greene granted a waiver to the consent decree that governs the activities of the "Baby Bells," allowing Bell Atlantic to deliver video programming by satellite.

For Bell Atlantic's legal department it was the latest in a series of key victories by vice-president and general counsel James Young and top lieutenants like Thorne, who heads a litigation team that spearheads challenges to the consent decree. The streak began when a federal judge ruled, in August 1993, that the Cable Act of 1984 did not prevent Bell Atlantic from entering the cable television business. (The ruling led to a 13 percent jump in the company's stock in the weeks that followed, temporarily adding $3.3 billion to Bell Atlantic's market value.)

Bell Atlantic must continue to knock down such barriers if it wants to succeed in the fiercely competitive communications business. The seven regional phone companies that emerged from the 1984 dismantling of American Telephone & Telegraph Company have spun into a frenzy of dealmaking in recent years. All of the Baby Bells, including Bell Atlantic (which provides local phone service in six Middle Atlantic states and the District of Columbia), have been snatching up companies and jumping into joint ventures in a variety of technologies, including cellular telephone, cable television, so-called "wireless cable," and video programming, all in an effort to be best-positioned to deliver whatever the post–information revolution consumer wants.

But the dealmaking rate doesn't approach the speed at which Bell Atlantic's litigation machine operates. Already in 1995 Young and his troops have launched a variety of actions: a false advertising suit against AT&T; an unusual preemptive motion for declaratory judgment to avoid an antitrust suit by a smaller competitor; and a petition for a writ of *mandamus* seeking to compel Judge Greene, who oversees all matters related to the phone company consent decree, to rule on applications for waivers from the consent

By Nicholas Varchaver

KATHERINE LAMBERT

decree without waiting for Justice Department review.

The barrage of litigation comes against a backdrop of a continuing legislative and regulatory assault and follows on the heels of an antitrust suit that Bell Atlantic and co-plaintiff NYNEX Corporation filed—and then settled—to block the AT&T acquisition of McCaw Cellular Communications, Inc., last year.

In fact, Bell Atlantic's torrid litigation pace can even get ahead of the business side. On April 25 Bell Atlantic announced that it would suspend two of its requests to be allowed to offer video services, after Bell Atlantic's lawyers had already helped the company become the first to win Federal Communications Commission approval to provide video services. The recent decision may turn out to be only a hiccup in Bell Atlantic's drive into video and cable services. In fact, two days later, on April 27, Bell Atlantic, two fellow Baby Bells, and several trade associations jointly filed a constitutional challenge to an FCC licensing requirement that Thorne asserts is impeding his client's entry into the cable business. One day after that, Judge Greene ruled that the Baby Bells can offer cellular long distance services if they can show that competition exists in their local markets.

Former vice-chairman and general counsel Robert Lovelown

In almost all of these cases, general counsel Young, in consultation with Thorne or other top company lawyers, conceived the litigation and then persuaded senior management to approve it. "They independently and aggressively look for ways to serve the company's business objectives," confirms Bell Atlantic vice-chairman James Cullen.

All of the Baby Bells try to use litigation to further their business goals. But Bell Atlantic stands out in the creativity of its approach, its willingness to take risks, and, most important, in its results. Even an in-house lawyer at a Baby Bell competitor calls Young's department "more innovative" than its rivals.

"They're very aggressive and they're willing to take adventurous positions," sometimes in contexts in which one doesn't expect victory, agrees Philip Verveer, a partner in the Washington, D.C., office of Willkie Farr & Gallagher, who represents the National Cable Television Association, which is opposing Bell Atlantic in its efforts to enter the cable TV business. "And they've been successful."

As another Washington communications lawyer puts it, comparing Bell Atlantic to the other, more reactive Baby Bells, Bell Atlantic has a "style of not waiting. It's like General Grant in the Civil War. While all the other generals were wringing their hands and wondering what the other side was going to do, he decided what *he* was going to do. Bell Atlantic's the same way."

Put another way, Bell Atlantic's litigation strategy doesn't consist of fending off assaults that might impede the company's business plan. At Bell Atlantic the litigation plan *is* the business plan.

A LICENSE TO HUNT

It's easy to tell a Bell Atlantic litigator from most in-house litigators. The Bell Atlantic variety tends to spend more time bringing suits than defending them. And the lawyers do much of it themselves. For example, virtually all of Bell Atlantic's FCC, Department of Justice, and state regulatory litigation is handled in-house.

The difference shows. Many in-house litigators, whose permanent role on defense seems to make them weary and jumpy at the same time, hang their shoulders as they intone the rote phrase "the charges have no merit" when any mention is made of the inevitable litigation pending against their client. Bell Atlantic lawyers, by contrast, have a confidence spawned by a sense that they control their destiny.

"We have a bias for action," says vice-president and associate general counsel Edward Young III, who heads Bell Atlantic's FCC team. (He is not related to general counsel James Young.)

Thorne agrees. "The internal atmosphere is 'seize every opportunity we can find,'" he says. "We're given some budget for weapons, and we have some license to go out and hunt." Like lawyers in firms, he says, Bell Atlantic's lawyers handle whatever is thrown their way by the business side: "But we also have the opportunity to sort of pick and choose where we want to go, and to invent things to do."

In many ways, the 38-year-old Thorne represents both the substance and the spirit of Bell Atlantic's approach. His ramrod posture, closely clipped hair, and 6-foot-3-inch height, combined with his starched white shirt and rep tie, give Thorne the appearance of a recently retired Marine. But his commanding presence is set off by a midwestern cheer that takes the sting out of his otherwise cocky air. He seems like the type of person who was constantly caught misbehaving in elementary school but never punished because the teacher liked him too much.

Simultaneously brash and genial, Thorne seems to enjoy his buttoned-down bad boy role. Outside his office, Thorne gestures at a decorative artifact, the dried skull of an African wildebeest, which sits on a table next to a window. "Meet John Malone," he grins, referring to the president of cable giant Tele-Communications, Inc., who was quick to criticize Bell Atlantic after a much-publicized merger proposal between the two companies fell apart.

Litigation, for lawyers such as Thorne and the rest of Bell

Atlantic's 17 Arlington, Virginia–based in-house litigators, seems like fun. (Although the company's biggest office is in Arlington, just outside of Washington, D.C., the company is officially headquartered in Philadelphia.) The thrill seems to come from their unusually prominent role in not only executing but also conceiving the company's litigation.

Thorne reports directly to general counsel James Young. It says something about Bell Atlantic that both Young and his predecessor, Robert Levetown, who guided the department from its creation, have been litigators. Young comes across as more sober than Thorne, but he seems to enjoy a good fight as much as his lieutenant does.

At age 43, Young has climbed fast. A former associate at Washington's Steptoe & Johnson, he joined the local phone subsidiary of Bell Atlantic in 1983 before moving to the parent company two years later. For years he handled FCC and Department of Justice–related work and made his way up the ladder. At certain moments his thick salt-and-pepper hair, round face, and cherubic grin give him a passing resemblance to speaker of the House Newt Gingrich. There's even the touch of the true believer in Young, who, since January of this year, has been responsible for the company's lobbying group. Young waxes eloquent about the need for regulatory relief. Like a good politician, he can cite anecdotes in support of his cause—such as one involving a wristwatch paging company that Bell Atlantic wanted to acquire. It went bankrupt during the several years it took for Bell Atlantic to get a consent decree waiver, and was finally acquired by another company, Seiko Corporation of America. Young skillfully makes his appeals in a common-sense, down-to-earth way that makes you forget that he's an advocate for a $13.8-billion-a-year company rather than a neighbor chatting with you on your front porch.

WRESTLING THE DECREE

General counsel Young describes his mandate as carrying on the work of the company's first general counsel, Levetown, who piloted the legal team until his retirement in 1992. A veteran of the pre-divestiture AT&T law department, Levetown had built a 96-lawyer department by the time he left.

For Bell Atlantic and its baby brethren, the world was created with a Big Bang known as the Modified Final Judgment. In 1984 the so-called MFJ ended Ma Bell's telephone monopoly by detaching AT&T's local phone subsidiaries and spinning them off into seven smaller companies. The MFJ provided that those local phone companies, such as Bell Atlantic, would be barred from providing long distance service and from manufacturing equipment. The much-reduced AT&T, meanwhile, would continue to provide long distance and for the first time would be allowed to manufacture computer equipment.

"The whole world turned upside down," recalls then–general counsel Levetown. Long reliant on AT&T's in-house lawyers for regulatory and tax work, Bell Atlantic's in-house lawyers had to develop skills and experience—fast. To face that task, Levetown had inherited a bunch of AT&T lawyers with vast expertise in laws that no longer existed.

Worse, nobody had any experience then in what would become the single most important practice area: the law that grew out of the MFJ. Nobody knew then, Levetown notes, that the MFJ would present enough complexity to keep thousands of lawyers employed for more than a decade.

From the beginning, Bell Atlantic sought constant relief from the consent decree restrictions so that the company could pursue its ever-expanding array of businesses. That meant continual contact with the Justice Department, which is required to recommend or oppose any proposed waiver from the decree restrictions. More than most Baby Bells, Bell Atlantic gave that responsibility to its in-house lawyers, says a former Justice Department lawyer.

"They tended to be aggressive in the legal positions they took," says Richard Rosen, who worked in the antitrust division of the Justice Department until last October, when he left to become a partner at D.C.'s Arnold & Porter. "They were more inclined to test the boundaries."

Another former Justice Department veteran agrees. "They were always looking ahead," says Michael Altschul, now general counsel of the Cellular Telecommunications Industry Association. In many cases, Altschul says, that meant structuring a case with the needs of the appeals courts in mind, since Bell Atlantic has often been stymied by consent decree overseer Judge Greene.

One observer describes Bell Atlantic as the Ulysses S. Grant of the Baby Bells: "While all the other generals were wringing their hands . . . he decided what *he* was going to do. Bell Atlantic's the same way."

THE 700 CLUB

Bell Atlantic's legal department remains essentially the same as the one Lev-

etown created, except for the atmosphere, which has softened since Levetown's departure. "Bob was a hard guy to work for," says current general counsel Young. "He was very demanding, set very high standards. It's a little like playing for Bobby Knight," he adds, referring to the combative but successful college basketball coach. "At first, it may not seem like such a great experience, but you look back on it and you recognize how much you've learned."

Young is perceived as more open and less intimidating. "Bob [Levetown] was an autocrat and Jim [Young] is more inclined to seek consensus," says Thomas McKeough, Bell Atlantic vice-president of mergers and acquisitions and associate general counsel. (Asked about his reputation as a stern taskmaster, Levetown responds, "No one likes to admit that they're stern or a taskmaster. But I had a concept of what the legal department's quality should be, especially on matters near and dear to our hearts. . . . So yes, I did have a very high standard, and I wanted everyone to work hard.")

Levetown, who routinely drafted briefs, also involved himself in the hiring process. Like many in-house departments, Bell Atlantic recruits its lawyers overwhelmingly from firms. But Levetown earned a reputation for another practice: He established a minimum score of 700 (out of 800) for applicants' LSATs. Long the butt of jokes in the department, the practice continues to this day, although attorney Michael Lowe, one of the lawyers who handles hiring for the department, says the rule was never absolute. (It's also gotten more difficult to gauge, Lowe says, since the scoring system has changed.)

Levetown defends the practice. "We found there was a pretty good correlation between high LSAT scores and [the ability to learn] new areas," he asserts. That fits with another element of the department's hiring strategy. Rather than draft only communications law veterans, Bell Atlantic has often hired lawyers with no such experience, but good general credentials.

LEVETOWN & YOUNG?

Levetown's lofty ambitions for his lawyers—not to mention his preoccupation with status—led him to consider an audacious, seemingly unprecedented notion. In 1993 Levetown explored the idea of spinning the law department off and converting it into a private outside law firm, which could then sell its services to both Bell Atlantic and other companies. What motivated him, he says, was "the residual bias against joining corporate legal departments among the best and brightest law school graduates." In other words, Levetown thought, top prospects would be more attracted to a firm than to an in-house department. Moreover, in theory, the law firm could make money.

Bell Atlantic chairman Raymond Smith was open to the idea, Levetown asserts. But Levetown says he never submitted a formal proposal to the chairman because he concluded on his own that the plan would not save the company money. (A spokesperson for Smith confirms the account.)

Before he ever considered forming a law firm, Levetown did find one surefire way to attract talent: money. Levetown bucked the rigid salary structure of the Baby Bells, which historically had militarylike salary grades. In 1986, when then-attorney James Young raved about Thorne, a former Kirkland & Ellis associate who was then working at Baby Bell Ameritech, Levetown lured Thorne away by bumping him up several notches in salary, a move that was then considered unusual in the Bell world. (Thorne says he can't remember the exact increase, but terms it "substantial.")

Under Young, Bell Atlantic continues to pay well across the board in the law department. Starting lawyers, typically midlevel associates from premier firms, generally earn anywhere from $110,000 to $140,000 per year with bonus. Lawyers with more responsibility bring in $200,000–$225,000 with bonus, and the corps of seven senior lawyers just below the general counsel earn anywhere from $300,000 to $450,000 with bonus. Bonuses typically run at 20–40 percent of base compensation. Pay is heavily weighted toward results, so that higher-paid lawyers sometimes see their compensation veer greatly up and down from year to year. On some occasions, the Bell Atlantic board has given "special awards" of $50,000–$100,000 to a lawyer for, as general counsel Young puts it, "really hitting the home run with the bases loaded."

In 1993 Bell Atlantic's then–general counsel floated the idea of spinning his department off as a private outside law firm, with Bell Atlantic as one client.

The salaries have helped attract a group that includes former partners at Kirkland & Ellis; Pepper, Hamilton & Scheetz; and Donovan Leisure, Rogovin & Schiller, as well as associates from virtually every high-profile D.C. firm. Young, who has hired 16 lawyers in the last two years, extols the law school records and firm credentials of his recent additions. For example, seven of the 16 new lawyers graduated from Harvard or Yale law school.

Young's hires have coincided with a 12-lawyer drop in the overall size of the department, which now numbers 84.

Young eased out some 28 lawyers little by little, in some cases helping them find jobs on the business side of the company. "Frankly, I thought there were positions where we were weak," says Young, who asserts that his ten years working up through the law department gave him an up-close perspective on the lawyers that Leverown, as the head of the department, had missed. As a result, Young has put his stamp on the department with his own group of young and energetic attorneys.

Associate general counsel Thomas McKeough

The department is spread among 14 locations. In addition to the 17 litigation lawyers in Arlington, another dozen or so handle business development and contracts work for the regulated businesses. The department has about 15 lawyers in Philadelphia, who handle the company's tax, ERISA, securities, labor, and M&A work. And then each of Bell Atlantic's 12 phone and other business subsidiaries has its own general counsel and up to six other lawyers.

BUSINESS IS THEIR LAW

Bell Atlantic's business side seems to hold the law department in high regard, giving it control of matters, such as lobbying, that go beyond law per se. For example, vice-president and associate general counsel Edward Young oversees both legal and nonlegal FCC matters, which are typically divided between the law and business sides at other regional Bells. Young oversees 68 nonlawyers, whose functions include the complex processes of setting prices for Bell Atlantic's various services.

Like Thorne, Edward Young, 39, is a big-firm refugee (in this case, from D.C.'s Shaw, Pittman, Potts & Trowbridge). But the two litigation capos differ in most respects. Quiet and low-key, Ed Young serves as the soft-spoken good cop to Thorne's aggressive if good-natured bad cop. "I'd say that we complement each other," Young agrees. Young's temperament fits his job, which includes not only litigating against other companies at the FCC and litigating against the FCC itself, but also cultivating commissioners and gently pushing them to see things Bell Atlantic's way.

Both work closely with Bell Atlantic's business side. "This is really an integrated strategy," says James Cullen, Bell Atlantic's vice-chairman. He praises the lawyers' understanding of the company's business and describes the law department as "a world-class law firm that happens to be built within Bell Atlantic."

Although the work of the department's litigators tends to get more attention outside the company, Bell Atlantic's business lawyers also work in step with the business people and play a key role. The company's confidence in its business lawyers is reflected, for example, in the fact that McKeough, who heads the department's five-lawyer mergers and acquisitions team, was recently given oversight of four more lawyers who do in-house M&A work for Bell Atlantic.

McKeough symbolizes Bell Atlantic's hands-on approach to deal work. Although Skadden, Arps, Slate, Meagher & Flom handled much of the drafting and due diligence, McKeough negotiated alongside two senior business people in the failed $30 billion merger with TCI. McKeough worked heavy hours on the negotiations, says Cullen, who himself rented a condominium near New York to participate in the months-long negotiations. "I remember very clearly waking up on a Saturday at five in the morning. Cullen recounts. "Because I made the mistake of putting a fax [machine] in my bedroom, and Tom McKeough was sending me a 50-page fax." ("I was not aware that his fax machine was that close to his bed," McKeough acknowledges ruefully.)

McKeough's group has had no shortage of work in recent months as Bell Atlantic has merged its cellular business with that of NYNEX; acquired a stake in CAI Wireless Systems, Inc., a wireless cable company; and helped construct several video joint ventures between itself, NYNEX, and Pacific Telesis Group, including one that will create video programming.

A CONSTITUTIONAL RIGHT TO CABLE TV?

Many of those ventures would have been stillborn without the litigation that made them possible. The most important of those cases was the 1993 challenge to the Cable Act. For years, the Baby Bells had fruitlessly tried to enter the cable business by making a variety of regulatory arguments. But Bell Atlantic decided to take a different approach. Thorne, Young, and Levetown—in conjunction with Harvard Law professor Laurence Tribe and former solicitor general and current Kirkland & Ellis partner Kenneth Starr—argued that the Cable Act's ban on offering programming over phone lines violated the First Amendment right to speech.

Thorne approached other Bell companies about joining the case, but none were interested. "When they started talking about that among the telecommunications industry, there were very few companies who seriously considered it," says former NYNEX counsel Mary McDermott, now vice-president, legal and regulatory affairs for the United States Telephone Association, to which all of the Baby Bells belong.

As a result, the other companies were caught flat-footed

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when federal district judge T.S. Ellis III ruled in Bell Atlantic's favor in August 1993. Chagrined, the other companies belatedly tried to intervene in the case, but the judge turned them down. As a result, the other companies are just now catching up with the last one, Southwestern Bell Corporation, winning a similar decision in April. In the meantime, Bell Atlantic has been moving forward, beginning cable tests in Virginia and New Jersey. (The case was upheld on appeal; at press time petitions for *certiorari* to the U.S. Supreme Court were due in May.)

THE BABY TAKES ON MA BELL

Last year Bell Atlantic waged another battle that was scorned by many of its competitors, according to U.S. Telephone Association's McDermott. When AT&T announced in August 1993 that it would acquire McCaw, the prospective merger sent shudders of fear through Bell Atlantic, which buys cellular equipment from AT&T, and competes against McCaw in the company's largest market, New York City. Thorne says the company feared that AT&T, which owns much of the cellular infrastructure, could refuse to sell equipment to Bell Atlantic and force Bell Atlantic to buy from other companies whose equipment isn't compatible with the AT&T infrastructure. Although such a strategy would cost AT&T money in the short run, he argues, the resulting increase in market share would more than compensate.

Over a period of months, Thorne lobbied the lawyers in the antitrust division of the Justice Department, trying to convince them to challenge the merger. Ultimately he failed. Although the Justice Department secured concessions from AT&T in a consent decree, none of the provisions addressed Bell Atlantic's concerns. So general counsel Young huddled with Thorne and former general counsel Levetown (who freelances occasionally for Bell Atlantic when needed). "I think it was pretty clear at that point that we weren't going to get anything out of the FCC," says Young, "and we weren't going to get anything out of Judge Greene." As it frequently does, Bell Atlantic looked to the remaining options. While most companies were focused on the merged entity's increased ability to hamper competition, the three lawyers decided to take a narrower approach and file an antitrust suit based on the equipment issue.

As vice-chairman Cullen puts it, Young "dumped about a half-pound of reading material on my desk" to make his case and quickly won management approval. Bell Atlantic then filed suit in September in federal court in Brooklyn along with NYNEX, which is in the process of merging its cellular operations with Bell Atlantic's. Young hired a team from Kirkland & Ellis, which shifted into overdrive to prepare for trial. (Federal judge Edward Korman had decided, in lieu of granting a preliminary injunction, to schedule a trial within six weeks.) Thorne moved up to New York and began working out of Kirkland's office there, writing briefs and serving as "the hub" of the operation, according to Kirkland partner Paul Cappuccio, part of the 15-lawyer team. Even retired general counsel Leverown traveled from his home in Houston to New York to help out.

Three days before the November 8 trial date, the two sides settled. No longer will AT&T's infrastructure be incompatible with non-AT&T equipment, asserts Young, who notes that a confidentiality clause prevents him from describing the specifics. "It commits AT&T to take a number of very concrete steps so that when we have the [cellular] switch from AT&T, we don't have to buy [cellular] sites from AT&T anymore," he says.

Although Young and Thorne profess complete satisfaction with the reconstituted AT&T/McCaw transaction, AT&T vice-president of law and public policy Mark Rosenblum, who also declines to discuss the specifics, pooh-poohs the significance of the changes won by Bell Atlantic. "It didn't seem to have any effect on the transaction," he maintains.

FIRST TO THE COURTHOUSE

In some ways the case that best reflects Bell Atlantic's approach is the one it filed against MFS Communications Co., Inc., a smaller company that competes with the Baby Bells to provide local service around the country through mandated access to the Baby Bells' phone lines. MFS has been warring with all the Baby Bells, who have resisted tooth and nail the attempts of companies like MFS to break into the local markets. Bell Atlantic, for example, has filed complaints at the FCC against MFS, among other small companies, claiming that it doesn't comply with rules requiring it to publish tariffs. MFS, meanwhile, has filed a string of complaints about Bell Atlantic and the other Bell companies at the FCC and at state regulatory agencies.

MFS's aggressive efforts have paid off

None of the other Baby Bells joined Bell Atlantic's suit to enter the video services business by challenging the Cable Act. Since Bell Atlantic's 1993 win, they've been scrambling to catch up.

with some of the Baby Bells. After a series of complaints before New York state regulators, NYNEX agreed in late January to cut the rates that it charges MFS to use its network.

Bell Atlantic took a completely different approach. Once again, Young and Thorne pow-wowed and came up with an idea for a preemptive strike against MFS that won the support of management. On February 15 the company filed a motion in Delaware federal court for a judgment declaring that Bell Atlantic is not violating federal antitrust law. "The problem is, they've been making the kinds of noises a potential antitrust plaintiff would make for a couple of years now," Thorne argues. "And they haven't sued us." Trying to corner MFS, the suit asserts that Bell Atlantic will drop the case if MFS will simply state, publicly, that it does not intend to file an antitrust suit.

The suit "made quite a splash when they filed it," says the telephone association's McDermott. "It's an innovative approach, when you look at what's going on in the country. It's not like Bell Atlantic's the only one litigating with MFS on these issues. . . . The different thing was that Bell Atlantic was not going to wait for the regulatory process to start."

Thorne notes that the action allows Bell Atlantic to choose the judicial forum in which the battle will be fought (Bell Atlantic was able to do the same thing in both the cable case and the AT&T/McCaw case). Most important, it has put MFS on the defensive. Although MFS's in-house lawyers decline to comment, MFS has moved to dismiss the action for lack of subject matter jurisdiction, among other things. In its briefs, MFS denies that it has threatened an antitrust suit, an argument that is tantamount to conceding that it will not bring one, claims one antitrust lawyer not connected with the case.

"My expectation is that we'll come to a resolution of that one pretty promptly," Young says of the MFS case, although he adds that the parties were not discussing settlement as of mid-April. (If the case does go to trial, it will be a clash of legal titans: Bell Atlantic has hired Dan Webb of Chicago's Winston & Strawn; MFS is countering with David Boies of New York's Cravath, Swaine & Moore.)

A COSTLY ZIG-ZAG

While the successes have mounted for Bell Atlantic in litigation and particularly in front of state regulatory agencies, the department's lawyers do trip up on occasion. On March 8 a Bell Atlantic subsidiary that co-owned two Philadelphia skyscrapers was hit with a $6 million verdict in a breach of contract case that implicated the department's lawyers. The subsidiary had bought the building as part of a joint venture and then had contracted with a small telecommunications company called Shared Communications Services, Inc. (SCS) for that company to provide a variety of phone services, such as basic phone service, answering service, and teleconferencing. The jury found that the subsidiary, Bell Atlantic Properties, Inc., and its partner had abrogated the contract. (Bell Atlantic is responsible for $3.5 million of the $6 million verdict, which includes $3 million in punitive damages assessed for the defendants' "outrageous" conduct. On top of that, Bell Atlantic will have to pay $2 million toward SCS's attorneys' fees.)

As Bell Atlantic ultimately had to concede, the company's in-house department was to blame for at least part of the problem. Bell Atlantic had to admit that it had breached the contract for at least one-and-a-half years because of advice provided by its in-house lawyers. Bell Atlantic Properties general counsel William Martin testified that, four years after signing the contract, a second Bell Atlantic lawyer informed him that the contract would violate the consent decree governing the AT&T breakup. As a result, Martin testified, Bell Atlantic Properties stopped observing the contract. A year and a half later, however, another in-house lawyer told Martin that the contract *wouldn't* violate the decree, Martin testified, so the company shifted gears and once again began observing the terms of the contract. Worse, Martin acknowledged at trial that he had never informed SCS, the company on the other side of the contract, either that Bell Atlantic was going to suspend its participation or, later, resume the participation.

Asked if the other Baby Bells compare to Bell Atlantic in their approach to litigation, Thorne responds, "None of them do it. The better ones follow us, and some of them only reluctantly."

Martin testified, "We didn't tell SCS because, based upon our dealings with SCS and based upon the threats that I had received from [SCS's lawyers], I was convinced if we so advised SCS, that they would blackmail us and threaten to go down to Judge Greene and threaten to go to the Department of Justice and try to get money from us that they weren't deserving to get."

Bell Atlantic has filed several post-trial motions, including one for judgment notwithstanding the verdict and a request to strike the punitive damages. General counsel Young argues that the confusion—which after all came in a

very small case for a company like Bell Atlantic—reflects the complexity of the consent decree's provisions.

RISKING A VENDETTA?

Despite the occasional defeat, Bell Atlantic remains undaunted. On April 7 it launched yet another attack, one that could benefit all of its competitors, who are watching with interest. For a decade, all of the Baby Bells have chafed under Judge Greene's ruling that he will not consider any of the dozens of proposed waivers of the consent decree until the Justice Department has weighed in on it. That sounds unobjectionable in theory. But in reality, according to Thorne, the Justice Department now takes an average of four years to take a position on each waiver request. Over the years many of the Baby Bells—most recently, Southwestern Bell—have asked Judge Greene to rule on their motions without waiting for the Justice Department's opinion. The judge has always turned them down.

So in April Thorne and general counsel Young teamed up with former D.C. appeals judge Malcolm Wilkey to draft a petition asking that the D.C. Circuit compel Judge Greene to rule on Bell Atlantic's motions without waiting for the Justice Department. "I think it's a fundamental mistake to take an agency like the Department of Justice—particularly the antitrust division—that's geared toward litigation . . . and put them in a regulatory role, essentially double-tracking what the FCC and the state regulatory commissions do," Young says. "That is a process that only produces delay."

It sounds like the sort of tactic that could alienate both Judge Greene and the Justice Department, who wield enormous influence over his client. But Thorne seems unconcerned. "First of all, I think Judge Greene has been angry at the Bell companies for seeking relief since the mid-eighties," he argues, asserting that that is reflected in Greene's opinions and speeches. But, he adds, "even if we honk them off a little bit, how long can we make the client wait?"

Former Justice Department lawyer Rosen agrees. "It's not calculated to win friends over there [at the Justice Department]," he says. "But at the same time I don't think it's going to lead to a vendetta."

TOO BUSY TO UNPACK

All of this activity means at least one thing for the Bell Atlantic lawyers: They're busy. Thorne's office reflects that fact. Five months after the department moved some of its lawyers, including Thorne, across the river from Washington to Arlington, Thorne has barely moved in. The stock report that adorns his door turns out to be his office's only decoration. Inside, the walls are bare. The corner office is spacious, or rather would be, if he removed the dozen or so moving boxes that are piled there—along with a huge garbage bag that leans up against his desk.

Thorne seems energized by the constant activity. His success has given him a relaxed swagger. When asked whether the other Baby Bells compare to Bell Atlantic in their approach to litigation, Thorne responds, "None of them do it. The better ones follow us, and some of them only reluctantly."

Most of Bell Atlantic's competitors were reluctant to speak about the company, even off the record. The majority of those who did comment, however, seemed to endorse the view that the company stands out in its activist tactics. An in-house lawyer at another regional Bell describes Bell Atlantic's legal approach variously as "forward-looking" and "more innovative" than the others. Another was more circumspect. "I think Bell Atlantic represents the personality of its chairman," says Ameritech Corporation general counsel Thomas Hester, who characterizes that personality as "adventuresome and aggressive."

Thorne and Young, meanwhile, bubble with ideas for the future. Young is excited because of recent legislative success. In March the Senate Communications Committee passed a bill 17 to 2 that would remove many of the most hated restrictions of the consent decree. And if the bill still has a long way to go, no one can deny that the prevailing mood in Washington favors deregulation. Young can sense victory. Until it comes, though, he will continue pushing down parallel tracks: from legislative lobbying, to pushing at the FCC, to strategic litigation.

"Well, I wouldn't want to speculate that we'd file another case against AT&T," Thorne muses, "although [according to market share] they are the monopolist of long distance and equipment."

Both Thorne and Young hint at future suits. They tout the potential of antitrust claims. They seem to mention the initials "AT&T" a lot. "Well, I wouldn't want to speculate that we'd file another case against AT&T," Thorne muses, "although they are the monopolist of long distance and equipment," at least on the basis of market share.

Thorne smiles, as if relishing the prospect of yet another dustup. Of course, even without another antitrust suit, there will be plenty to keep him occupied. And if any of those suits work out, there may be many more "buy" recommendations pasted on his door before long. ■

CERTIFICATE OF SERVICE

I, Michael W. Fleming, hereby certify that on June 12, 1998 a copy of the foregoing "JOINT OBJECTION OF WORLDCOM, INC. AND MCI COMMUNICATIONS CORPORATION TO DISCLOSURE OF STAMPED CONFIDENTIAL DOCUMENTS" was hand delivered, to the following:

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